

Article 8.

Pay of Militia.

§ 127A-105. Rations and pay on State service.

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than 18 times the minimum hourly wage per day as provided for in G.S. 95-25.3(a). (1813, c. 850, s. 5, P.R.; R.C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C.S., s. 6864; 1935, c. 452; 1959, c. 218, s. 17; 1975, c. 604, s. 2; 1997-153, s. 2; 1997-443, s. 7.12(c).)

§ 127A-106. Paid by the State.

When the militia or any portion thereof is ordered by the Governor into State service, the pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor. (1917, c. 200, s. 52; C.S., s. 6866; 1975, c. 604, s. 2; 1993, c. 257, s. 12; 1997-153, s. 6; 1997-443, s. 7.12(c); 2011-195, s. 1(a).)

§ 127A-107. Rate of pay for other service.

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the North Carolina National Guard or naval militia, and the expenses and compensation therefor of the officer or enlisted member shall be paid out of the appropriations made to the Department of Public Safety. The officers or enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the Armed Forces of the United States, provided that no such officer or enlisted member shall receive less than 18 times the minimum hourly wage per day as provided for in G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C.S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1; 1969, c. 986; 1971, c. 204; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1997-153, s. 3; 1997-443, s. 7.12(c); 2009-281, s. 1; 2011-145, s. 19.1(g); 2011-195, s. 1(a).)

§ 127A-108. Pay and care of soldiers, airmen and sailors disabled in service.

A member of the North Carolina National Guard, the State defense militia, or the naval militia who without fault or negligence on the member's part is disabled through illness, injury, or disease contracted or incurred while on duty or by reason of duty in the service of the State or while reasonably proceeding to or returning from duty shall receive the actual necessary expenses for care and medicine and medical attention at the expense of the State and if the disability temporarily incapacitates the member from pursuing the member's usual business or occupation the member shall receive during his or her incapacity the pay and allowances that are provided for the same grade and rating in like circumstances in the active Armed Forces of the United States. If the member is permanently disabled, the member shall receive the pensions and benefits that persons under similar circumstances in the Armed Forces of the United States receive from the United States. In case a member dies as a result of such an injury, illness or disease within one year after it has been incurred or contracted, the surviving spouse, minor children, or dependent parents of the member shall receive the pension and benefits as persons under similar circumstances receive from the United States.

The cost incurred by reason of this section shall be paid out of the Contingency and Emergency Fund, or another fund designated by law.

The Adjutant General, with the approval of the Governor, shall make and publish regulations pursuant to this section that are necessary for its implementation. Before the name of any person is placed on the disability or pension rolls of the State under this section, proof shall be made in accordance with these regulations that the applicant is entitled to the care, pension, or benefit.

Nothing in this section shall in any way limit or condition any other payment to a member that the law allows, except that any payments made under the provisions of Chapter 97 of the General Statutes or under federal statutes as now or hereafter amended shall be deducted from the payments made under this section. (1917, c. 200, s. 54; C.S., s. 6868; 1959, c. 218, s. 19; c. 763; 1965, c. 1058; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

§ 127A-109. Pay of general and field officers.

General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C.S., s. 6867; 1975, c. 604, s. 2.)

§ 127A-110. Proceedings against third party injuring or killing organized militia personnel.

(a) The right of a member of the North Carolina National Guard, the State defense militia, or the naval militia to compensation and other benefits under G.S. 127A-108 shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the State, or "third party," to pay damages therefor. The respective rights and interests of the member under this Article, and the State, if any,

in respect of the common-law cause of action against a third party and the damages recovered shall be as set forth in this section.

(b) The member or personal representative if the member be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if the proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During this 12-month period, and at any time thereafter if summons is issued against the third party during the 12-month period, the member or personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of the injury or death, subject to the provisions of subsection (h) of this section.

(c) If settlement is not made and summons is not issued within the 12-month period described in subsection (b) of this section, then all rights of the member, or personal representative if the member be dead, against the third party shall pass by operation of the period fixed by the statute of limitations applicable to these rights and if the State has not settled with or instituted proceedings against the third party within this time, then all such rights shall revert to the member or personal representative 60 days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring a proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by subsection (h) of this section. A proceeding so instituted by the person having the right shall be brought in the name of the member or personal representative and the State shall not be a necessary or proper party thereto. If the member or personal representative refuses to cooperate with the State by being the party plaintiff, then the action shall be brought in the name of the State and the member or personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of the injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending the proceeding, by answer duly served on the State, sufficiently alleges that actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in the case as to whether actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death. The State shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though it were a party although not named or joined as a party to the proceeding. The issue as to the State's negligence shall be the last of the issues submitted to the jury. If the verdict is that actionable negligence of the State did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the State would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the member or personal representative free of any claim by the State and the third party shall have no further right by way of contribution or otherwise

against the State, except any right which may exist by reason of an express contract of indemnity between the State and the third party, which was entered into prior to the injury to the member.

- (f) (1) Any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of the injury or death shall be disbursed by order of the court for the following purposes and in the following order of priority:
 - a. First to the payment of actual court costs taxed by judgment.
 - b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and this fee shall not exceed one third of the amount obtained or recovered of the third party.
 - c. Third to the reimbursement of the State for all benefits by way of compensation or medical treatment expense paid or to be paid by the State pursuant to G.S. 127A-108.
 - d. Fourth to the payment of any amount remaining to the member or personal representative.
- (2) The attorney fee paid under subdivision (1) of this subsection shall be paid by the member and the State in direct proportion to the amount each shall receive under sub-subdivisions (1)c. and d. of this subsection and shall be deducted from the payments when distribution is made.

(g) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of the party's interest under subsection (f) of this section upon any payment made by the third party by reason of the injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and the lien may be enforced against any person receiving the funds. Neither the member or personal representative nor the State shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both State and member or personal representative join therein; provided, that this sentence shall not apply if the State is made whole for all benefits paid or to be paid by the member or personal representative under this Chapter less attorney's fees as provided by subsection (f) of this section and the release to or agreement with the third party is executed by the member. The Attorney General shall have the right on behalf of the State to reduce by compromise its claim.

(h) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other. (1967, c. 1081, s. 1; 1975, c. 604, s. 2; 2011-195, s. 1(a); 2012-194, s. 26.)

§ 127A-111. Civilian leave option.

(a) A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No

member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes. (1997-153, s. 4.)

§§ 127A-112 through 127A-115. Reserved for future codification purposes.